

1 **WO**

2  
3  
4  
5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
8

9 SECURITIES AND EXCHANGE) No. CV-09-00443-PHX-GMS  
10 COMMISSION, )  
11 Plaintiff, ) No. CR-09-00365-PHX-FJM  
12 vs. ) No. CR-09-00372-PHX-SRB  
13 ) **ORDER**  
14 MARTIN G. FRASER; DON W.)  
WATSON; EDWARD W. O'BRIEN;) )  
15 GARY M. OPPER, )  
Defendants. )  
16 \_\_\_\_\_ )  
17

18 Pending before three Courts in this District are various motions to transfer cases to a  
19 single Judge. For the following reasons, the Court grants these motions in part and denies  
20 them in part.

21 **BACKGROUND**

22 The motions to transfer arise in three cases involving Defendants Fraser, Watson,  
23 O'Brien, and Opper, all of whom were officers of CSK Auto Corporation ("CSK"). The case  
24 before this Court, CV-09-00443-PHX-GMS ("Civil 443"), is based on a complaint filed by  
25 the Securities and Exchange Commission against all four defendants on March 5, 2009.  
26 (Dkt. # 1.) The complaint asserts various violations of the securities laws stemming from  
27 Defendants' alleged involvement in fraudulently hiding uncollectible receivables, over-  
28 recognizing vendor allowances, and misrepresenting CSK's financial performance.



**I. Which Judge Should Rule on the Transfer Motions?**

The Local Rules provide that if a party believes that cases should be transferred to a single Judge, the motion to transfer “shall be filed in the case with the lowest case number and shall be heard by the Judge assigned to that case.” LRCiv 42.1(a)(1); *see also* LRCrim 5.3 (incorporating LRCiv 42.1 into the rules for transfer of related criminal cases). Application of this rule is ambiguous in the context of motions to transfer civil and criminal cases, as civil and criminal case numbers are assigned separately and therefore are not a reliable indication of which case was filed first. Here, Civil 443 was filed before either Criminal 372 or Criminal 365. Thus, this Court is the proper forum for deciding the transfer motions. The Court will therefore consider all of the transfer motions that have been filed.

**II. Should the Cases be Transferred to a Single Judge?**

The Local Rules provide five factors the Court may consider in deciding whether to transfer cases to a single Judge:

Whenever two or more cases are pending before different Judges and any party believes that such cases (A) arise from substantially the same transaction or event; (B) involve substantially the same parties or property; (C) involve the same patent, trademark, or copyright; (D) calls [sic] for determination of substantially the same questions of law; or (E) for any other reason would entail substantial duplication of labor if heard by different Judges, any party may file a motion to transfer the case or cases involved to a single Judge.

LRCiv 42.1(a)(1); *see also* LRCrim 5.3.

Here, the nature of the two criminal cases is sufficiently similar such that transfer to a single Judge is appropriate. The cases do arise from substantially the same transaction or event (namely, the alleged securities fraud scheme) and call for similar legal determinations. Moreover, although Criminal 372 portends extensive litigation, a Judge would not be overly-burdened by presiding over Criminal 365 as well because that case is at the sentencing stage. Indeed, because the guilty pleas of Defendants O’Brien and Oppen in Criminal 365 are likely to be an important issue in Criminal 372, transfer of both cases to a single Judge will promote an efficient resolution of any such issues.



DATED this 13th day of May, 2009.

G. Murray Snow  
United States District Judge